

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matters of	:	
	:	
Connect America Fund	:	WC Docket No. 10-90
	:	
A National Broadband Plan for Our Future	:	GN Docket No. 09-51
	:	
Establishing Just and Reasonable Rates for Local Exchange Carriers	:	WC Docket No. 07-135
	:	
Developing a Unified Intercarrier Compensation Regime	:	CC Docket No. 01-92
	:	
Federal-State Joint Board on Universal Service	:	CC Docket No. 96-45
	:	
Lifeline and Link-Up	:	WC Docket No. 03-109

**REPLY COMMENTS OF THE PENNSYLVANIA TELEPHONE ASSOCIATION
TO THE COMMENTS SUBMITTED BY
THE STATE MEMBERS OF THE FEDERAL STATE JOINT BOARD ON UNIVERSAL
SERVICE**

I. SUMMARY

The Pennsylvania Telephone Association (“PTA”) submits the following Reply Comments to the Comments of the State Members of the Federal State Joint Board on Universal Service filed on May 2, 2011 (“State Member Comments”). The PTA is an association of rural local exchange carriers (“RLECs”) operating in Pennsylvania under the jurisdiction of the Federal Communications Commission (“Commission”) and the Pennsylvania Public Utility Commission.¹ The PTA does not necessarily agree with all of the matters set forth in the State

¹ The Pennsylvania Telephone Association is the Commonwealth’s oldest trade organization for the local exchange carrier industry. PTA represents telecommunications companies that provide a full array of services over wire line

Member Comments, but does believe there is merit in many areas of the State Members' position. The PTA files these Reply Comments to highlight those areas of agreement and to support those positions taken by the State Members.

II. REPLY COMMENTS

A. VOIP as a Telecommunications Service

There is a substantial group of carriers that have refused to pay compensation to the terminating carrier claiming that the Commission's prior decisions exempt them from the payment of traditional compensation, such as access charges, on any voice traffic which relies upon the newer technology of Internet protocol,² because such calls are an "information service." This specious controversy has been permitted to rage without clarification by the Commission. Many State Commissions³ and Federal Courts have addressed the issue, but the lack of a clear ruling by the Commission has encouraged a regulatory void which unscrupulous carriers have exploited. The State Member Comments are right on point when they state:

The FCC's failure to definitively classify VoIP traffic has given VoIP providers an artificial competitive advantage that has exacerbated the problem of revenue erosion. ILEC network facilities today are used to terminate VoIP traffic, although transmitting carriers sometimes refuse to pay compensation or pay at much lower rates.⁴

networks. PTA members support the concept of universal service and are leaders in the deployment of advanced telecommunications capabilities.

² Internet Protocol ("IP") is a digitized language and transmission protocol that improves on the prior standard TDM which has been consistently used in telephone networks for the last twenty years or so. The telecommunications industry and its networks have evolved from electro-mechanical to analog to digital and, now, are undergoing another major technology shift.

³ *Palmerton Telephone Company v. Global NAPs South, Inc., Global NAPs Pennsylvania, Inc., Global NAPs, Inc. and Other Affiliates*, Docket C-2009-2093336, Opinion and Order entered March 16, 2010; *Joint Petition Of Hollis Telephone et al for Authority to Block the Termination of Traffic from Global NAPs Inc.*, New Hampshire Public Utilities Commission, Docket No. DT 08-028, Reconsideration Order, Order No. 25,088 dated April 2, 2010; and *Sprint Communications Company L.P. v. Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom*, Iowa Utilities Board Docket No. FCU-2010-0001, Order, issued February 4, 2011 at 42-43.

⁴ State Member Comments at 21.

The originating (or terminating) technology should make no difference and this opportunistic arbitrage should be definitively ended. Drawing unwarranted distinctions among technologies transforms the entire intercarrier billing system into something that is unworkable and financially catastrophic. There is no way for the terminating carrier to know the originating technology on a call received or whether “enhancements” occurred on the call. Hundreds of millions of long distance voice minutes are received and billed on the basis of the originating number, which basic information is contained within the calling records, and has operated for decades as the basis for all intercarrier billing. Introduction of variables that are unknown to the terminating company makes billing impossible. That is why such considerations have never been incorporated into either the tariff or federal/state regulatory law.

Technology is evolving, as it always has, and many networks are now a combination of transmission protocols and underlying facilities. Again, the State Members correctly observe:

At the same time, much of the traffic currently classified as telecommunications service is transported in part over digital networks, using packet switching in part of its transmission path. Indeed, so far as we are aware, the principal differences between VoIP service and telephone service are those created by the regulatory ambiguity that we here recommend ending.⁵

The regulatory distinction between “information” and “telecommunications” services is a long-standing one that was originally intended to distinguish between common carriers and users of those telecommunications services. The term “information services” has been previously defined in narrow terms⁶ and has some overlap with the term “enhanced services.”⁷

⁵ *Id.* at 19.

⁶ Information service. – The term “information service” means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service. 47 U.S.C. § 153(20).

⁷ Enhanced service. – The term “enhanced service” means services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber’s transmitted information; provide the subscriber

Certain arbitragers argue that they (or someone else) enhance the call by protocol conversion, thus, transforming it into an information service, which exempt it from access charges. Under the Commission's case law dating back to the AT&T divestiture in 1984, customers of telecommunications services that offered dial-up data services, such as WestLaw or CompuServe, were not telecommunications carriers and did not have to pay access to receive incoming calls. These "ESPs" were granted "the option of purchasing interstate access services on a flat-rated basis from intrastate local business tariffs, rather than from interstate access tariffs used by [interexchange, long distance carriers]."⁸

Protocol changes are only one aspect of the enhanced service provider definition and clearly are also part of the functions that are excluded from the definition of "information services."⁹ This is the trap fallen into by some, such as the Federal District Court for the District of Columbia.¹⁰ The problem is that the *PAETEC* Court reduces that "information" test to a single prong. As the Iowa Utility Board recently observed:

Under the *PAETEC Decision*, all that needs to happen for a service to be classified as an information service (and thus be subject to federal jurisdiction) is a net protocol conversion. However, in 1998, the FCC declined to render such a broad and definitive conclusion about net protocol conversion in its Stevens Report to Congress. The 12-page *PAETEC Decision* does what the FCC never completed in the IP-Enabled Services docket, and does so without acknowledging any distinction between various types of IP-Enabled services previously identified by the FCC.¹¹

additional, different, or restructured information; or involve subscriber interaction with stored information. 47 C.F.R. § 64.702(a).

⁸ *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd 2631 (1988) ("ESP Exemption Order"). "Thus, ISPs generally pay local business rates and interstate subscriber line charges for their switched access connections to local exchange company central offices." *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Declaratory Ruling and Notice of Proposed Rulemaking released February 26, 1999 at ¶5. The ESP exemption means that the ESP itself can obtain standard business service from the local exchange carrier, rather than having to obtain access service.

⁹ "...but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service." 47 U.S.C. § 153(20).

¹⁰ *Paetec Communications, Inc. v. CommPartners, LLC*, 2010 WL 1767193 (D.D.C. Feb. 18, 2010).

¹¹ *Sprint Communications Company L.P. v. Iowa Telecommunications Services, Inc.*, *supra* at 42-43.

The Commission has never ruled that IP traffic is an exempt “enhanced” or “information” service:

- “[W]e have not decided whether interconnected VoIP services are telecommunications services or information services.”¹²
- “The Commission has not yet classified interconnected VoIP services as ‘telecommunications services’ or ‘information services.’”¹³

Although the Commission has not directly answered the question of whether VoIP, particularly interconnected VoIP, is “telecommunications” service, it has ascribed many obligations of common carriers to them, including: Emergency 911,¹⁴ Communications Assistance for Law Enforcement Act,¹⁵ USF Contribution (state and federal),¹⁶ Consumer Proprietary Network Information,¹⁷ Disability Access Requirements,¹⁸ FCC Regulatory Fees,¹⁹ and Number Porting.²⁰

¹² *In the Matters of IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36 and 05-196 (First Report and Order and Notice Of Proposed Rulemaking, released June 3, 2005) (“*FCC VoIP 911*”) at ¶ 22.

¹³ *In re Universal Service Contribution Methodology, et al.*, WC Docket No. 06-122 *et al.* (Report and Order and Notice of Proposed Rulemaking released June 27, 2006) (“*FCC VoIP USF*”) at ¶ 35; *See also, Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, MD Docket No. 07-81 (Report and Order and Further Notice of Proposed Rulemaking, released August 6, 2007).

¹⁴ *In re E911 Requirements for IP-Enabled Service Providers et al.*, WC Docket Nos. 04-36 and 05-196, (FCC June 3, 2005), First Report and Order and Notice of Proposed Rulemaking, FCC 05-116, ¶¶ 24 & 25 and n. 80, at 13, 15 (*911 Decision*).

¹⁵ *In re Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, (FCC May 12, 2006), Second Report and Order and Memorandum Opinion and Order (“*CALEA Decision*”).

¹⁶ *FCC VoIP USF* at ¶¶ 53-58; *In the Matter of Universal Service Contribution Methodology; Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Interstate Revenues*, FCC WC Docket No. 06-122, Declaratory Ruling (Released November 5, 2010) (“*FCC State USF Declaratory Ruling*”).

¹⁷ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115, WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking released March 13, 2007 (“*FCC VoIP CPNI Order*”).

¹⁸ *IP-Enabled Services*, WC Docket No. 04-36, WT Docket No. 96-198, CG Docket No. 03-123, CC Docket No. 92-105, Report and Order released June 15, 2007.

¹⁹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, MD Docket No. 07-81, Report and Order and Further Notice of Proposed Rulemaking released August 6, 2007.

²⁰ *Telephone Number Requirements for IP-Enabled Services Providers*, WC Docket No. 07-243; *Local Number Portability Porting Interval and Validation Requirements*, WC Docket No. 07-244; *IP-Enabled Services*, WC Docket No. 04-36; *Telephone Number Portability*, CC Docket No. 95-116; *CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 99-200, Report And Order released November 8, 2007. As noted by the FCC: “On four occasions, the Commission has extended certain Title II obligations to interconnected VoIP providers.” *Id.* at ¶ 14.

The Commission has also recognized that:

- VoIP is indistinguishable from traditional voice service;²¹
- Not all of the communications traffic handled by VoIP providers is interstate;²²
- The interstate and intrastate communications traffic handled by VoIP providers can be separated;²³ and
- The VoIP providers benefit from interconnection to the PSTN and should pay.²⁴

In resolving this regulatory debate, the better view is that espoused by the State

Members:

... the States have treated VoIP calls as but one species of a “telecommunications service” that is properly subject to the bi-jurisdictional regulatory oversight of the States and the FCC. If the States are treating VoIP as a telecommunications service for purposes of State law, the Commission should treat VoIP as a telecommunications service for purposes of federal law.²⁵

The PTA wholeheartedly agrees.

B. POLR Duties for Broadband

The PTA member companies, all incumbent rural carriers, are already charged under state law²⁶ to provide access to ubiquitous broadband services throughout their entire service territories by a date certain. The vast majority of the members opted to do so by year end 2008. While other carriers are free to choose their area of operation, the PTA rural companies are the only guarantors of universally broadband availability in Pennsylvania. This obligation is in addition to their carrier of last resort duties for voice service.

²¹ *FCC VoIP CPNI Order, supra.*

²² *FCC VoIP USF, supra.*

²³ *Id.*

²⁴ *In re IP-Enabled Services*, 19 F.C.C.R. 4863 (2004) (“*IP-Enabled Investigation*”). The Commission stated its belief that “any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network.” *Id.* at ¶ 61. “We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.”

²⁵ State Member Comments at 22.

²⁶ 66 Pa. C.S. § 3011 *et seq.*

C. Phantom Traffic

Additionally, phantom traffic, the absence of the identifying information needed to properly rate a call for compensation purposes, is an increasing problem in the industry. Whether the calling party information fields are never populated by the originating carrier, subsequently stripped out by another carrier, or improperly re-populated with false information, the result is an inability to render accurate bills and, frequently, an aid to access cheating. It is critical that the Commission adopt a set of uniform principles allowing carriers to accurately identify all minutes utilizing their networks, as well as capture the proper jurisdiction for those minutes.

Therefore, the PTA also concurs in the State Members Comments where they state:

State Members support the approach taken in the NPRM that carriers have an obligation to report where traffic originates and terminates. To constrain phantom traffic, the FCC should allow carriers to decline transmission or termination for external traffic that is not billable to another carrier. Traffic that is delivered on a dedicated trunk or delivered on a per-call basis with sufficient identifying information would be treated as billable. While this new rule may increase uncompleted calls in the short run, the system should self correct very quickly, as the burden falls, as it should, on practitioners. The FCC should offer delegation of enforcement authority to States as necessary to compel compliance with FCC directives in this area.²⁷

D. Intercarrier Compensation Reform

Finally, the PTA companies share the State Members concerns over intercarrier compensation reform that seeks extreme results particularly in the current economic environment.

²⁷ State Member Comments at 157.

The PTA member companies were pleased to have had the opportunity to present data either through the State Members' data request or through the national associations. The analysis of that data and other sources undertaken in the State Member Reply Comments is thorough and insightful. The PTA concurs with the State Members that there is potentially a significant adverse impact on customers' basic phone rates depending on how the FCC addresses intercarrier compensation reform.

First, as observed by the State Members Comments there are currently enormous pressures on RLEC finances:

Overall, State Members are quite concerned about whether current trends can continue indefinitely without witnessing an increasing number of incumbent carriers (at least the small and mid-sized carriers) losing money. They may find that they are unable to raise capital needed for broadband enhancements and to replace aging plant. They may find that they are forced to reduce costs, even by deferring maintenance and by degrading service quality. They may find that they must consider exiting from unprofitable rural markets.²⁸

Draconian changes, without moderation or offsetting balancing mechanisms, will lead to local rate increases that the marketplace will not accept, thereby further adversely affecting RLECs' financial condition:

State Members found that the multi-proposal combination of reducing intrastate access to interstate, eliminating corporate operations expense and reducing HCL percentages would be particularly significant. Among NECA companies, a significant share of carriers in 32 States would have to raise rates by at least \$20.00 per month, and in 15 States some rate increases would be at least \$50 per month. Debt ratios among NECA companies would degrade to the point that most companies would experience difficulty in raising capital. Among mid-sized companies the effects are not as thoroughly analyzed, but they would appear to be of a similar nature, with significant decreases in current revenues likely to lead to rate increases, impairment of access to capital, or both.²⁹

²⁸ *Id.* at 116.

²⁹ *Id.* at 117.

III. CONCLUSION

The Pennsylvania Telephone Association appreciates the opportunity to file these Reply Comments and thanks the Commission for the opportunity to do so.

Respectfully submitted,



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